

1 order to recover attorney's fees. Rather, the relevant
2 standard is objective." Citing cases.

3 The question as to whether the plaintiff's
4 allegations lacked an arguable basis of law or fact -- strike
5 that. A complaint will typically be found to be frivolous
6 where "it lacks an arguable basis either in law or in fact."
7 That's 109 Supreme Court 1827. As Judge Brody noted in Solomen
8 v. Redwood Advisory Co., 223 F.Supp.2d 681 (E.D.Pa. 2002):

9 "The Ninth Circuit, while noting the importance of a
10 'foundation in fact or law,' held that a suit is 'frivolous is
11 the results are obvious, or the arguments are wholly without
12 merit."

13 In reviewing this matter, I note that an initial
14 motion to dismiss was survived, and I incorporate herein by
15 reference as is fully set forth the argument, as well as the
16 court's order entered on January 12, 2006, wherein, I sustained
17 the Crawford's objections to the proposed amendment. Although,
18 I found for the reasons on the record at that time that the

19 plaintiff's positions insofar as Crawford were not well-taken
20 for the reasons stated on the record, I cannot say that the
21 positions were so frivolous, unreasonable or without foundation
22 as to trigger the attorney's fees provision as articulated in
23 Christiansburg. There is, in my view, a difference between
24 arguments that are a stretch and arguments that are patently
25 frivolous. In this case the defendant Crawford deserved to be

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1 dismissed from the case on solid legal grounds. But I do not
2 find that the plaintiff's positions were so extreme as to
3 justify the imposition of attorney's fees. And they are
4 denied.

5 Now, the next thing that has to happen here is I'm
6 going to have my deputy clerk schedule a status conference in
7 this case. But I'm just going to say this. I am not real
8 happy about this huge waste of judicial and legal time that
9 brought us here today. And, frankly, in almost 12 years on the
10 bench it's never happened and I find it regrettable.

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12 (Whereupon, at 4:20 p.m., the proceedings were

13 concluded.)

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1 CERTIFICATE

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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13 Ronald J. Bench

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